



Mr. Dale Morris, Regional Director
Fee-to-Trust Application Letter

PALA BAND OF MISSION INDIANS

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Pala, CA 92059

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August 12, 2009

Dale Morris, Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Suite W2820
Sacramento, California 95825

Dear Mr. Morris:

Enclosed please find a fee-to-trust application package for parcel APN 110-040-13-00, hereinafter referred to as the "Duker" property. The Pala Band of Mission Indians (hereinafter "Tribe") owns this property in fee and desires that the United States accept the property to be held in trust for the Tribe. The enclosed application package should include the documentation and information necessary so that your office may proceed in the processing of the application.

1. Applicable Regulations

Section 25, Part 151 of the Code of Federal Regulations sets forth the authorities, policies and procedures governing the acquisition of land by the United States in trust for the benefit of Indian tribes. In determining whether to approve a tribe's request to accept fee land that is on or contiguous to the reservation in trust, the Secretary must consider the following: (1) the existence of statutory authority for the acquisition (§ 151.10(a)); (2) the tribe's need for additional trust land (§ 151.10(b)); (3) the proposed use for the land (§ 151.10(c)); (4) the impact on the state in which the land is located, and its political subdivisions, resulting from removal of the land from the tax rolls (§ 151.10(e)); (5) jurisdictional problems and conflicts that may arise as a result of transfer of the land into trust (§ 151.10(f)); (6) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from acquisition of the land into trust (§ 151.10(g)); and (7) compliance with 516 DM 6, appendix 4, the National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations (§151.10(h)). Each of these considerations is discussed in turn below.

2. Statutory Authority (25 C.F.R. § 151.10(a))

Pursuant to the Indian Reorganization Act (25 U.S.C. §§ 461 et seq.) (hereinafter "IRA"), the Secretary of the Interior is authorized to acquire any interest in land for the purpose of

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providing land for Indian tribes. The Indian Land Consolidation Act (25 U.S.C. §§ 2201 et seq.) (hereinafter "ILCA") extends the provisions of the IRA to all tribes under federal jurisdiction at the time of passage of the IRA notwithstanding a tribe's decision to opt out of the IRA's provisions. The Tribe was under federal jurisdiction at the time of passage of the IRA, but voted to reject the terms of the IRA. See Ten Years of Tribal Government Under the I.R.A., Theodore H. Hass, United States Indian Service, p.14 (1947). Therefore, ILCA provides statutory authority for acquisition of the subject parcel.

3. Location and Description of Property

The Duker property consists of ± 78.5 acres and lies approximately one (1) mile east of Pala Temecula Road and approximately one and one-quarter (1 ¼) mile north of Highway 76. The property is surrounded on all but its western boundary by the Pala Indian Reservation. It shares its northern boundary with BIA Tract T1020, its eastern boundary with BIA Tract T1010, and its southern boundary with BIA Tract T1021.

The property is currently being used for agricultural purposes. Approximately 80% of the property is used to grow citrus and the remaining 20% is used to grow avocados. There is a single family dwelling on the property which is currently occupied by an individual who works on the property for the Tribe. There is no landlord-tenant relationship between this individual and the Tribe. The Tribe simply allows the individual to occupy the property free of rent.

The property is described as follows:

The North Half of the Southeast Quarter of Section 23, Township 9 South, Range 2 West, San Bernardino Meridian, in the County of San Diego, State of California, according to the official plat map thereof.

4. Tribe's Desire and Need for Acquisition in Trust (25 C.F.R. § 151.10(b))

The Tribe wants to ensure that the Duker property continues to be used for agricultural purposes, is adequately maintained and protected for future generations, and that the Tribe has the ability to exercise its jurisdiction as a sovereign tribal government over the property. The only way to achieve this is transfer of the property into trust for the Tribe. Moreover, the only way to ensure that the Tribe continues to be, at minimum, the beneficial owner of the property is to transfer the property into trust. Otherwise, it is at least possible that the Tribe is divested of some, if not all, of its rights with respect to the property if, for example, the state exercises its condemnation power on the property.

Transfer of the Duker property into trust will be of benefit to the Pala Indian Reservation as it will result in the elimination of a large "gap" in the Reservation because, as explained above, the property is almost entirely surrounded by tribal trust lands. The property can also act as a "buffer zone" between existing trust land and non-tribal land, helping to protect tribal lands from the adverse effects that may potentially result from development of nearby non-tribal lands.

While the United States currently holds approximately 11,119 acres of land in trust for the Tribe, a large portion of this acreage is steep and not appropriate for commercial, agricultural or residential development. Exhibit E contains maps that depict the usable portions of the existing reservation. As you can see, a large percentage of the reservation consists of steep, rocky slopes that are generally inaccessible and either not capable of being developed, or may only be developed with considerable, and perhaps cost prohibitive, expense. The transfer of the Duker property into trust will result in an additional \pm 78.5 acres of land that the Tribe can put to profitable use. While it is true that the Tribe currently operates a successful gaming operation, it is imperative that the Tribe diversify, undertaking business endeavors other than Indian gaming. Diversification, along with the expansion of the Tribe's land base, is the only way that the Tribe can ensure that its current and future members are culturally and financially secure for many years to come.

The Tribe is fully aware of the effect of conveying the Duker property to the United States to be held in trust for the Tribe, including the significant degree of oversight that will be exercised by the Bureau of Indian Affairs once the property is accepted into trust. Nevertheless, the Tribe desires the transfer. Overall, the transfer of the Duker property into trust benefits both the Tribe and its lands. These benefits are entirely consistent with the United States' trust responsibility to the Tribe.

5. Proposed Use (25 C.F.R. § 151.10(c))

As explained above, the property is currently being used to grow citrus and avocados. The Tribe will continue to use the property for these purposes. There is no planned change in land use.

6. Non-Gaming Acquisition

The Tribe does not plan to use the Duker property for gaming purposes and, as a result, this fee-to-trust application is not subject to the special provisions as contained in Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. § 2719) as it relates to the transfer of land into trust to be used for gaming or gaming-related purposes.

7. Impact Resulting from Removal of Property from Tax Rolls (25 C.F.R. § 151.10(e))

The 2008-2009 tax assessment for the Duker property was \$34,384.52. All taxes due and owing have been paid in full and there are no prior year delinquencies. A copy of the 2008-2009 tax bill for the property has been included as Exhibit C for your review. The total of all assessed property taxes in San Diego County for the same tax year was \$391,186,058,062. Available at <http://www.sdcounty.ca.gov/auditor/trb0809/docs/InventoryofParcels.pdf>.

As you can see, taxes on the Duker property are de minimus in comparison to the County's overall tax revenue, representing merely 0.000000088% of the annual property tax

revenue. Thus, removal of the Duker property tax amount from the County tax roll will have little, if any, effect on the County's annual property tax revenue.

8. Jurisdictional Concerns (25 C.F.R. § 151.10(f))

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of the transfer of the Duker property into trust. The property is almost entirely surrounded by existing tribal trust lands. Moreover, the non-tribal lands surrounding the property are undeveloped. Given the location of the property relative to the Pala Indian Reservation as well as the fact that the immediately adjacent non-tribal lands are undeveloped, it is unlikely that jurisdictional conflicts will arise once the property is transferred into trust.

All criminal, and some civil state jurisdiction over the property, will remain the same despite the acquisition of the property into trust. The Duker property lies wholly within the State of California, a "Public Law 280" state. Pursuant to Public Law 280, the State maintains criminal jurisdiction over Indian lands in California and maintains jurisdiction over civil causes of action between Indians or to which Indians are parties. 18 U.S.C. § 1162; 25 U.S.C. § 1360. The transfer of land into trust does not affect the State's Public Law 280 jurisdiction. Thus, the State and its political subdivisions will continue to maintain a degree of control over certain activities on the Duker property despite the transfer of the property into trust.

That the Tribe will no longer be bound by San Diego County's zoning regulations with respect to the Duker property will not present a problem as the current and proposed property use is consistent with the County's zoning for the area. The property is currently zoned A70 (Limited Agricultural) with a four-acre minimum parcel size. Permitted uses generally include single-family residential, fire protection services, and agricultural uses. Because the Tribe's plans for use fall squarely within the current San Diego County zoning regulations applicable with respect to the property, no jurisdictional conflicts in connection with use of the property will arise.

9. Ability of the Bureau to Discharge Trust Responsibility (25 C.F.R. § 151.10(g))

It has long been understood that the Bureau has a trust responsibility for all Indian tribes located within the exterior boundaries of the United States as well as for lands held in trust for Indian tribes and individual Indians. Acceptance of the Duker property into trust will not impose any significant additional responsibilities or burdens on the Bureau beyond those already inherent in the federal trusteeship over the existing reservation. The Tribe will ensure that all essential services – security, fire protection, education, natural resources protections, etc. – are provided to the property using existing federal allocations and/or profits from the Tribe's economic enterprises. Moreover, the Tribe is a member of the Fee-to-Trust Consortium and, as a result, elects to forego receipt of federal funding to which it is entitled to help cover the federal government's costs in processing the Tribe's fee-to-trust applications and otherwise carrying out the trust responsibility.

There are no anticipated additional Bureau obligations as a result of the transfer of the Duker property into trust since the Tribe does not have any plans to change the use of the property. Even if the Tribe chooses to use the property for other than agricultural purposes in the future, any additional Bureau obligations resulting from this transfer will be minimal and may include limited real estate services such as approval and recording of leases and easements, recording of transfer documents, and approval of extended contracts affecting trust lands. The Tribe is dedicated to working with the Bureau, to the greatest extent possible, to minimize any additional burdens which may result from the transfer of the property into trust.

10. Title Requirements

The United States Department of Justice Title Standards (hereinafter "Title Standards") require that title insurance be obtained prior to acquisition of land by the Federal Government. The required form for the title insurance policy is the American Land Title Association (ALTA) U.S. Policy – 9/28/91. The policy must list the United States of America as the proposed insured and, where the consideration is not readily ascertainable, the liability amount must be equal to the estimated value of the land being acquired.

Enclosed please find a commitment to issue title insurance prepared by Chicago Title Company, Order No. 930014807-U50, dated May 12, 2009. See Exhibit D. The type of insurance policy contemplated by the commitment is an ALTA U.S. Policy – 9/28/91, and it lists the "United States Department of Interior in trust for the Pala Band of Mission Indians, a federally recognized Indian Tribe" as the proposed insured, as required by §§ 5(a)(1) and 5(a)(2) of the Title Standards. The amount of liability is set at \$3,100,000.00, the approximate assessed value of the property as set forth on the Shasta County Assessor's rolls, as required by § 5(c) of the Title Standards.

Section 5(a)(5) of the Title Standards requires that Schedule "B" of the title commitment list any exceptions to the proposed title policy including any liens, easements, or similar encumbrances on the property. Schedule "B" of the enclosed title commitment does not contain any title exceptions that generally would be unacceptable to the United States such as unpaid taxes, mortgage liens, access issues, or special assessments which create a lien on the property. We have included copies of all instruments referenced in the title commitment as required by § 5(a)(6) of the Title Standards, and have addressed each exception listed in Schedule "B" briefly below. The Tribe has determined that these exceptions are acceptable as they will not interfere with or prevent the Tribe's current or future use of the subject parcels.

- Exception 1: Refers to treaties and statutes affecting the land and the Tribe. This exception appears to be a standard exception for all Chicago Title Policies issued where a tribe is involved. As you know, there are no ratified treaties with tribes in California. As explained above, the Tribe is fully aware of the fact that special statutes and regulations will be applicable with respect to the property once it is accepted into trust. These statutes and regulations will not interfere with the Tribe's current or future use of the property.

- Exceptions 2 & 3: Refer to regular and supplemental property taxes and assessments. As explained above, all property taxes due and owing have been paid in full, and there are no prior year delinquencies encumbering title.
- Exception 4: Refers to the fact that the public record does not disclose that ownership of the Duker property includes rights of access to or from any public roadway. Lack of access to the property is not a problem. The Tribe has no problem accessing the property from existing roadways. Furthermore, the property is almost entirely surrounded by lands held in trust by the Tribe, over which access to the Duker property can be obtained.
- Exception 5: Refers to water rights, whether or not shown by the public record. The Tribe conducted due diligence at the time of purchasing the property and is not aware of any recorded or unrecorded water rights that may affect the Duker property.
- Exceptions 6, 8, 9, 10, 11 & 12: Refer to public utility easements held by the San Diego Gas and Electric Company. These easements benefit the property as they result in the availability of electricity on the property. The easements have not and will not interfere with the Tribe's current or proposed use of the Duker property. Copies of the recorded easements (Book 4253, Page 37; Book 5904, Page 482; File No. 145518; File No. 201153; File No. 1980-291988; and File No. 1980-350444) have been included as Attachments 1-6 to Exhibit D.
- Exception 7: Refers to a record of survey recorded on June 17, 1955, which discloses variances from the recorded legal description. That the record of survey shows a variance in the legal description should not present a problem. The survey discloses the exact location and dimensions of the Duker property. The variance appears to be very small, the distance in length between the western and eastern boundaries being a mere 27.7 feet, and the distance between the northern and southern boundaries being a mere 4.6 feet. It is unlikely that the variance between the survey and the legal description will present a problem, particularly because the property is almost entirely surrounded by tribal trust lands. A copy of the survey has been included as Attachment 7 to Exhibit D.
- Exception 13: Refers to the rights of any parties in possession of the property which are based on any unrecorded lease. As explained above, the Tribe allows an individual who works on the property to reside in the residence on the property rent-free. The Tribe has made no oral or written representations with respect to the individual's continued right to occupy the residence. In the absence of a written agreement, the only way this individual can claim any rights in the property is by adverse possession under claim of right. In California, adverse possession under claim of right requires, in part, continuous occupancy of the property without the owner's permission for five years and payment of all state, county and municipal taxes levied on the property. See Cal. C.C.P. §§ 324, 325. The individual occupying the residence on the Duker property cannot show that his possession meets either of these requirements. The Tribe is unaware of any unrecorded lease which may affect the property.
- Exception 14: Refers to any defects, liens, encumbrances, adverse claims or other matters that may arise between the issuance of the title commitment and the final title policy. The Tribe has no intention of encumbering the property during the fee-to-trust process.

Pursuant to the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), and the Implementing Regulations at 516 DM 6, Appendix 4, all fee-to-trust applications must be accompanied by an Environmental Assessment or a Environmental Impact Statement unless there is an applicable categorical exclusion. Pursuant to 516 DM 6 Appendix 4 § 4I, a categorical exclusion shall be issued in the case of land conveyances and transfers where there is no planned change in land use. Since the Tribe intends to continue use of the Duker property for purposes of growing citrus and avocados, a categorical exclusion is appropriate. A draft categorical exclusion checklist has been included as Exhibit F.

The Tribe understands that, pursuant to 602 DM 2, the Bureau of Indian Affairs is required to conduct an environmental site assessment and complete a Phase 1 Contaminant Survey to ensure that acquisition of land does not subject the Department of the Interior to liability for hazardous substances or other environmental cleanup costs and damages. The Tribe has not uncovered or been informed of the existence of any hazardous substances or other environmental damage on the property which would subject the Department to liability. We are happy to assist in any way we can in carrying out any requirements resulting from the Bureau's responsibilities pursuant to 602 DM 2, including escorting Bureau staff to the property to conduct a visual inspection.

We thank you for your time and attention to our request for acquisition of the Duker property into trust. Should you have any questions or concerns regarding this application, please contact Sara Dutschke, Karshmer & Associates, at (510) 841-5056.

Sincerely,



Robert Smith
Chairman, Pala Band of Mission Indians

Enclosures:

- Exhibit A – Tribal Resolution [REDACTED] 09-22
- Exhibit B – Grant Deed Conveying Property to Tribe
- Exhibit C – Property Tax Statements
- Exhibit D – Title Commitment No. 930014807-U50
 - Attachment 1 – Right of Way, Book 4253, Page 37
 - Attachment 2 – Right of Way, Book 5904, Page 482
 - Attachment 3 – Right of Way, File No. 145518
 - Attachment 4 – Right of Way, File No. 201153
 - Attachment 5 – Right of Way, File No. 1980-291988
 - Attachment 6 – Right of Way, File No. 1980-350444
 - Attachment 7 – Record of Survey No. 3113
- Exhibit E – Maps
- Exhibit F – Categorical Exclusion Checklist